



[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-135524-14]

RIN 1545-BM63

Property Transferred in Connection with the Performance of Services

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to property transferred in connection with the performance of services. These proposed regulations affect certain taxpayers who receive property transferred in connection with the performance of services and make an election to include the value of substantially nonvested property in income in the year of transfer.

DATES: Comments must be received by **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-135524-14), room 5205, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-135524-14), Courier's Desk, Internal Revenue

Service, 1111 Constitution Avenue, NW, Washington, DC, or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov/> (IRS REG-135524-14).

FOR FURTHER INFORMATION CONTACT: Concerning these proposed regulations, Thomas Scholz or Michael Hughes at (202) 317-5600 (not a toll-free number); concerning submissions of comments, and/or to request a hearing, Regina Johnson, at (202) 317-6901 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### **Background**

Section 83(a) of the Internal Revenue Code (Code) provides generally that if, in connection with the performance of services, property is transferred to any person other than the person for whom such services are performed, the excess of the fair market value of the property (determined without regard to any restriction other than a restriction which by its terms will never lapse) as of the first time that the transferee's rights in the property are transferable or are not subject to a substantial risk of forfeiture, whichever occurs earlier, over the amount (if any) paid for the property is included in the service provider's gross income for the taxable year which includes such time. Section 83(b) and §1.83-2(a) permit the service provider to elect to include in gross income, as compensation for services, the excess (if any) of the fair market value of the property at the time of transfer over the amount (if any) paid for the property.

Under section 83(b)(2), an election made under section 83(b) must be made in accordance with the regulations thereunder and must be filed with the IRS no later than 30 days after the date on which the property is transferred to the service provider.

Under §1.83-2(c), an election under section 83(b) is made by filing a copy of a written statement with the IRS office with which the person who performed the services files his

or her return. In addition, the person who performed the services is required to submit a copy of such statement with his or her income tax return for the taxable year in which such property was transferred. Section 1.83-2(d) requires that the person who performed the services also submit a copy of the section 83(b) election to the person for whom the services were performed.

In recent years, it has come to the attention of the IRS that many taxpayers who wish to electronically file (e-file) their annual income tax return have been unable to do so because of the requirement in §1.83-2(c) that they submit a copy of their section 83(b) election with their income tax return. Commercial software available for e-filing income tax returns does not consistently provide a mechanism for submitting a section 83(b) election with an individual's e-filed return. As a result, an individual who has made a section 83(b) election may be unable to e-file his or her return and at the same time comply with the requirement in §1.83-2(c) that a copy of the section 83(b) election be submitted with the return. An individual who made a section 83(b) election would be required to paper file his or her income tax return to comply with the requirements under §1.83-2(c).

Since the introduction of the e-file program, the IRS has encouraged taxpayers to file returns electronically. The e-file program reduces the amount of paper the government must process, and this reduction of paper processing allows the IRS to be more efficient and use valuable resources to address other critical work.

In order to remove this obstacle to e-filing an individual tax return, the proposed regulations would eliminate the requirement under §1.83-2(c) that a copy of the section 83(b) election be submitted with an individual's tax return for the year the

property is transferred. As described in this preamble, section 83(b)(2) requires that an election made under section 83(b) be filed with the IRS no later than 30 days after the date that the property is transferred to the service provider. This statutory requirement provides the IRS with the original section 83(b) election. Section 83(b) elections are scanned by the service center receiving the election, and an electronic copy of the election is generated. The creation of this electronic copy of the section 83(b) election eliminates the need for a taxpayer to submit a copy of the section 83(b) election with his or her individual tax return.

Taxpayers are reminded of their general recordkeeping responsibilities pursuant to section 6001 of the Code, and more specifically of the need to keep records that show the basis of property owned by the taxpayer. Taxpayers must maintain sufficient records to show the original cost of the property and to support the tax treatment of the property transfer reported on the taxpayers' returns. Taxpayers must keep these records as long as they may be needed for the administration of any provision of the Code. Generally, this means records that support items shown on a return must be retained until the period of limitations for that return expires. See section 6501 of the Code. A copy of any section 83(b) election made with respect to property must be kept until the period of limitations expires for the return that reports the sale or other disposition of the property.

### **Explanation of Provisions**

The proposed regulations would remove the second sentence in §1.83-2(c) of the existing regulations. This would eliminate the requirement that taxpayers submit a copy of a section 83(b) election with their tax return for the year in which the property subject to the election was transferred.

**Proposed Effective Date**

These regulations under section 83 are proposed to apply as of January 1, 2016, and would apply to property transferred on or after that date. Taxpayers may rely on these proposed regulations for property transferred on or after January 1, 2015.

**Special Analyses**

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

**Comments and Request for Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are timely submitted to the IRS as prescribed in this preamble under the “Addresses” heading. The Treasury Department and the IRS request comments on all aspects of the proposed rules. All comments will be available at [www.regulations.gov](http://www.regulations.gov) or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits written or electronic

comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

### **Drafting Information**

The principal authors of these proposed regulations are Thomas Scholz and Michael Hughes, Office of the Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department participated in their development.

### **List of Subjects 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements

### **Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

#### **PART 1--INCOME TAXES**

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Par. 2. Section 1.83-2 is amended by revising paragraph (c) and adding paragraph (g) to read as follows:

§1.83-2 Election to include in gross income in year of transfer.

\* \* \* \* \*

(c) Manner of making election. The election referred to in paragraph (a) of this section is made by filing one copy of a written statement with the internal revenue office with which the person who performed the services files his return.

\* \* \* \* \*

(g) Effective/applicability date. Paragraph (c) of this section applies to property transferred on or after January 1, 2016.

John M. Dalrymple,  
Deputy Commissioner for Services and Enforcement.

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